



State of New Jersey

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September 2, 2004

TO: Chief School Administrators
Charter School Lead Persons

FROM: Dwight R. Pfennig
Acting Commissioner

SUBJECT: Update on the Status of Requested No Child Left Behind Accountability Provisions

I am pleased to provide you with a summary of the approved policy amendments and technical corrections to our No Child Left Behind (NCLB) Consolidated State Accountability Workbook, approved by USDOE on July 11, 2004. These amendments are effective for the 2004-2005 school year. A more detailed description of these policy amendments as well as technical amendments are contained in the workbook which can be found on the department's website at <http://www.state.nj.us/njded/grants/nclb/workbook.pdf>.

Policy Amendments:

- Establish a minimum subgroup size of 35 for special education students to ensure meaningful inclusion of special education students in the overall accountability system while taking into account the vulnerability to sampling and measurement error in the small, heterogeneous special education subgroup. (Critical Element 5.5)
- Establish a minimum subgroup size of 40 for participation rate only, to mitigate the unintended consequence of penalizing schools and districts for the absence of 3 or fewer students on test administration day. (Critical Element 3.2)

- Implement the recent flexibility granted to states which permit increased flexibility in including the English language learner subgroup in the general assessment system, for the purpose of determining AYP. (Critical Element 5.4)
- Implement the recent regulation for special education students participating in the Alternate Proficiency Assessment and the process to review exceptions to the 1% cap in those districts that exceed the cap. (Critical Element 5.5)
- Implement the district improvement provision. Districts will be identified for improvement if they fail to make adequate yearly progress (AYP) for two consecutive years in the same content area for all elementary, middle and high school grade levels (Critical Element 4.1).

Technical Corrections:

- Reflect actual practice in the state by including students with disabilities enrolled in private schools as being counted in the accountability systems of the sending districts. Correct reference to alternative schools. (Critical Element 1.1)
- Establish the newly developed third grade test (NJ ASK 3) as a field test in May 2003, as a benchmark test in March 2004 and an operational test that will be used for accountability purposes in March 2005. (Critical Element 3.2 (b), 6.1, 9.1)
- Amend the schedule for adding additional assessments. (Critical Element 3.2 (b);1.4)
- Implement safe harbor calculations using the full extent of the flexibility provided under the law. Where the total student population does not meet AYP, safe harbor calculations will be run for the student subgroups to determine AYP. (Critical Element 3.2)
- Move the assessment administration dates to March. (Critical Element 1.4)
- Clarify state policy pertaining to certification of school districts and correct grammatical error. (Critical Element 1.6)
- Clarify the state's current policy on the protection of privacy of students for AYP determinations and reporting purposes. (Critical Element 5.6)
- Clarify the process used for equating tests. (Critical Element 9.3)
- Clarify state standards for reliability in making AYP determinations and the appeals process for data discrepancies on AYP results. (Critical Element 9.1)
- Update the status of the state's historic legislatively mandated school report card issued in August 2003 to accommodate AYP notification requirements. We are now moving forward to merge the two report cards into a single state school report card that satisfies state and federal requirements, which will provide information in greater detail and in a

format that is more “user friendly”. AYP determinations/notifications will continue to be provided before the start of the school year as required. (Critical Element 1.5)

- Continue use of the drop-out rate as an interim measure for graduation rate, as the other academic indicator in high schools. (Critical Element 7.1; 7.2, 7.3)
- Revise timeline for full implementation of the student level data management system. (Critical Element 2.1)
- Prioritize the technical assistance provided to districts identified as “in need of improvement” status using a triage approach to help those districts most in need of assistance and least able to act on their own. All districts will be identified as “in need of improvement” when 90% of when their measured AYP indicators (41) in all school across the district are met and when 50% of the schools within a district have not met AYP measures. This change is being made to support the development and implementation of a state evaluation and assistance delivery system infrastructure with sufficient capacity to conduct the necessary in-depth analysis and diagnosis of schools/districts in need of improvement. (Critical Element 1.2)

We would also like to take this opportunity to share with you our future direction for the out years. The department will explore multiple measures and diverse options available to administer academic assessments. This will include the use of technology-based and performance-based student assessments as part of New Jersey’s statewide assessment system. Additionally, we are in the process of designing a single accountability system, NJ Quality Single Accountability Continuum (NJQSAC) that can best be described as a continuum. At one end of the continuum are districts demonstrating high performance requiring no state intervention. At the opposite end, districts are demonstrating low performance that requires differentiated state intervention. This system will include AYP as a method for determining compliance with NCLB and, in a much broader context multiple measures to determine the overall performance of school district effectiveness in five domains (instruction and program, fiscal, operations, personnel and governance). The latter will require both state statutory and regulatory changes as well as an extended timeframe for implementation.

We would also like to take this opportunity to share our concern and recommendation for change to the law itself as it relates to special education students. We believe that the cap of 1% of those students who may be determined proficient through the use of alternate achievement standards is inappropriate and must be changed in order for students with disabilities to be fairly and appropriately included in the provisions of NCLB.

While the number of students with severe cognitive disabilities statewide may indeed be 1% or close to it, there is another group of students with significant disabilities who have not been considered in this law. Our data demonstrate that these are students who have significant (not severe) cognitive disabilities and are working within the general education curriculum but at a level at least three years below their chronological age or grade level peers. These students are not able to meet grade level expectations even with appropriate instruction

and support services. By the nature of their significant disabilities, they may never meet the high level of expectations that are required in New Jersey standards.

According to our data, there are 37,732 students who are in the categories typically associated with the most significant disabilities, as defined in recent Department regulations, i.e. both the significant and severe categories as defined above. This includes the categories of: traumatic brain injured, autistic, mentally retarded, multiply disabled and deaf and blind. (It is important to note that not all students in these categories have the most significant cognitive disabilities and we would expect some to meet grade level expectations). Similarly, there are students in other categories whose intellectual functioning would negatively impact their ability to meet high level age or grade level expectations.

Our data demonstrate that approximately 2.8% of overall state enrollments are students with the most significant cognitive disabilities (i.e. as defined by Department regulations). Recognizing the individual needs of students with disabilities and including them meaningfully in the assessment and accountability system is a cornerstone of the Individuals with Disabilities Education Act (IDEA), we believe NCLB's 1 % cap is inconsistent in this particular area.

An analysis of the results of our Grade Eight Proficiency Assessment for 2003 in language arts literacy reveals that a total of 9.3% of the students with disabilities who participated in this assessment did not receive a score since they completed less than 20% of the test items. For these students in many instances the test was clearly inappropriate. We estimate that an additional 1.5% of students should have participated in an alternate performance assessment. We believe that the current 1% cap has the effect of forcing students with disabilities into assessments is inappropriate and data based on these assessments are not valid measures of either participation or performance. The effect of this cap is to hold schools and districts accountable for unreasonable standards and provide little incentive to improve results for students with disabilities.

We fully support including all students with disabilities in the accountability system, however, it must be in an appropriate manner. Therefore we have strongly recommended to the United States Department of Education that the law be revised to allow states to set the cap for students with severe cognitive disabilities to be determined proficient through alternate standards based on their data but not to exceed 3% of the total population. For New Jersey, that would mean that 85% of our students with disabilities would be expected to meet grade level expectations while 15% (those with the most significant disabilities) would meet alternate, yet rigorous standards. We believe this a challenging yet reasonable goal that would require great efforts to achieve. While we have not yet received a response to this recommendation, we believe it will be given due consideration as the reauthorization of IDEA moves forward.

We anticipate additional workbook amendments as these efforts proceed and will advise you accordingly.

If you have any questions or require additional information on these amendments, please feel free to contact your county superintendent.

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c: State Board Members

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